

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of ) IB Docket No. 95-91  
 ) GEN Docket No. 90-357  
Establishment of Rules and Policies for the ) RM No. 8610  
Digital Audio Radio Satellite Service ) PP-24  
in the 2310-2360 Mhz Frequency Band ) PP-86  
 ) PP-87

To: The Commission

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COMMENTS OF  
NATIONAL PUBLIC RADIO, INC.

Introduction

National Public Radio, Inc. ("NPR") hereby submits its Comments in response to the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding. Notice of Proposed Rulemaking, FCC 95-229, rel. June 15, 1995 ["NPRM"].

NPR is a non-profit membership organization dedicated to the development of a diverse noncommercial educational radio service for the American public. Celebrating twenty-five years of radio excellence, NPR produces and distributes such acclaimed programming as *All Things Considered*, *Morning Edition*, *Talk*

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*Of The Nation*, and *Performance Today*. In addition to its programming, NPR provides satellite interconnection, representation, and membership services to more than 500 noncommercial educational radio stations across the United States.

**The Commission's DARS Licensing Rules  
Should Serve the Public Interest by Facilitating Greater  
Access to a Diversity of Public Telecommunications Services**

As the Commission correctly recognizes, it is statutorily obligated to exercise its licensing authority consistent with the public interest, and this mandate extends to the new DARS licensing rules. See NPRM at ¶ 27 (citing 47 U.S. § 307(a)). It appears, however, that by focusing specifically on the public interest obligations of terrestrial broadcasters and, in particular, those of commercial broadcasters, the Commission has framed the issue too narrowly. See NPRM at ¶ 28. The issue is not only how to assure the continued viability of terrestrial broadcasting; rather, it is also to determine how DARS will best serve the public interest by taking advantage of the technology's unique attributes and promise.

As an initial matter, the reasonable access requirements and other specific obligations of commercial terrestrial broadcasters represent only a portion of the total contribution terrestrial broadcasting makes to the public interest. Although unacknowledged in the NPRM, the entire programming service offered by noncommercial educational stations is devoted to meeting the educational, cultural, and informational needs of the American people. See 47 C.F.R. §

73.503. Fashioning public interest obligations for DARS providers by reference to those of terrestrial broadcasters requires consideration of the extensive public benefits associated with all of terrestrial broadcasting, including noncommercial educational broadcasting.

Even properly considered, however, the nature and scope of public interest obligations borne by terrestrial broadcasters is only part of the inquiry. While the Commission is properly concerned with the competitive effect DARS will have on terrestrial broadcasting, the issue of how best to promote the public interest involves more than assessing the relative costs associated with serving the public interest and taking steps to assure that neither DARS providers nor terrestrial broadcasters enjoys an undue competitive advantage over the other. The principal issue remains how DARS will serve the public interest.

The answer to that question stems from the primary benefit associated with DARS technology -- its capability of offering access to high quality audio programming to unserved or underserved audiences.<sup>1</sup> Because of this feature of the service, DARS provides an important vehicle for achieving the public policy goal of extending access to public telecommunications services to areas and audiences unserved or underserved by terrestrial broadcasters. As codified in the Communications Act, "it is necessary and appropriate for the Federal

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<sup>1</sup> See Comments of National Public Radio, Amendment of the Commission's Rules With Regard to the Establishment and Regulation of New Digital Audio Radio Services, GEN Docket No. 90-357, Nov. 13, 1990, at 35 ("NPR DARS Comments"); see also NPRM, Separate

Government to complement, assist, and support a national policy that will most effectively make public telecommunications services available to all citizens of the United States.”<sup>2</sup>

While NPR and others have previously recommended the reservation of a portion of the DARS channel capacity for the offering of public telecommunications services,<sup>3</sup> such an approach represents only one way to assure the delivery of educational, cultural, and informational programming to unserved and underserved audiences.<sup>4</sup> As an alternative, for instance, a DARS provider might occupy all of its allotted channel capacity if it commits itself directly or through a third party to provide at least a minimum amount of educational, cultural, and informational programming to unserved and underserved audiences.<sup>5</sup> The DARS provider’s performance in meeting any such commitments could be evaluated as part of the license renewal process.

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Statement of Commissioner Ness, at 1.

<sup>2</sup> 47 U.S.C. § 396(a)(7); see S. Rep. No. 221, 102d Cong, 1st Sess. 11-12, reprinted in 1992 U.S.C.C.A.N. 844-45 (specifically recognizing the needs of rural, minority, and other unserved and underserved audiences and encouraging the delivery of service to those audiences).

<sup>3</sup> NPR DARS Comments at 40-41; Comments of a Consortium of Public Radio Organizations, Amendment of the Commission’s Rules With Regard to the Establishment and Regulation of New Digital Audio Radio Services, GEN Docket No. 90-357, Jan. 29, 1993, at 7.

<sup>4</sup> NPR understands that Primosphere Limited Partnership (“Primosphere”), one of the remaining DARS applicants, is committed to the offering of public telecommunications services, including by providing third party access to its prospective channel capacity, and NPR applauds Primosphere’s recognition of the importance of this issue.

<sup>5</sup> This approach might be compared to a “citizens’ agreement” between a terrestrial broadcaster and a local community group by which, for instance, the broadcaster commits to meeting certain programming objectives. See 47 C.F.R. §§ 73.3588, 73.4060.

The decision in Daniels Cablevision, Inc v. United States,<sup>6</sup> even if upheld on appeal, does not pose a barrier to the institution of access requirements or other measures intended to assure the public interest. See NPRM at ¶ 27. In that case, the district court's decision was based on the absence of any record to support the access obligations.<sup>7</sup> There is no inherent constitutional infirmity associated with access obligations or with other public interest obligations.<sup>8</sup>

While other approaches to serving the public interest may be identified in this proceeding, the Commission clearly cannot meet its statutory obligations merely by deferring the matter to the marketplace. Otherwise, the likely result will be the offering of services that the DARS provider expects to generate the largest audiences and revenue. Moreover, the value associated with the satellite delivery of CD quality entertainment programming and other mass market services -- as a competitive alternative to terrestrial broadcasting -- is likely to be realized at the expense of terrestrial broadcasting.

NPR continues to believe that the real promise of DARS technology is in the aggregation of niche markets of unserved and underserved audiences for the

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<sup>6</sup> 835 F. Supp. 1 (D.D.C. 1983), appeals pending sub nom. Time Warner Entertainment Co. L.P. v. FCC, No. 93-5349 and consolidated cases (D.C. Cir.).

<sup>7</sup> Id. at 8-9 ("In the absence of a record identifying a valid regulatory purpose or some other legitimate government interest to be advanced by conscripting DBS channel space, there is no justification for any First Amendment burdens occasioned by section 25.")

<sup>8</sup> See Turner Broadcasting System, Inc. v. FCC, 114 S. Ct. 2445, 2469 (1994) ("In sum, the must-carry provisions do not pose such inherent dangers to free expression, or present such potential for censorship or manipulation, as to justify application of the most exacting level of First

delivery of new audio services, and NPR encourages the Commission to achieve this promise through the expeditious implementation of the DARS licensing rules. In the final analysis, however, the success or failure of the technology in serving the public interest will depend on the extent to which DARS providers offer unserved and underserved audiences access to diverse educational, cultural, and informational programming. Likewise, and whether through the adoption of access requirements or through other means, the success or failure of the Commission's DARS licensing rules will be judged by the same standard.

## **Conclusion**

For the foregoing reasons, the Commission should proceed expeditiously to establish the DARS licensing rules, including specific measures to ensure that DARS providers will serve the public interest by providing unserved and underserved audiences with access to a diversity of high quality educational, cultural, and informational audio programming.

Respectfully Submitted,

NATIONAL PUBLIC RADIO, INC.



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Stephen E. Nevas, Esq.  
Vice President, Legal Affairs  
and General Counsel

Mary Lou Joseph  
Vice President, Member Services

Donald Lockett  
Vice President, Audio Engineering

Michael Starling  
Director, Technical Operations

Gregory A. Lewis, Esq.  
Assistant General Counsel

635 Massachusetts Avenue, N.W.  
Washington, DC 20001-3753

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